IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2599 OF 2006

Rajesh Sadashiv Gurav ..Petitioner

V/S

The Secretary, Rayat Shiksan

Sanstha, Satara & Ors. ..Respondents

Uday P. Warunjikar for Petitioner.

Milind Deshmukh for Resp. No.1 & 2.

A.P. Vanarse AGP for Resp. No. 3.

CORAM : A.P. DESHPANDE, J.

DATE : 10TH JANUARY, 2007.

JUDGMENT

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties. The petitioner was appointed as full time lecturer in diploma course in Production Engineering conducted by the Respondent No. 2. The Respondent No. 1 Society administers and manages the above Engineering College, so also the diploma course in polytechnic. As stated hereinabove the petitioner was appointed to teach the diploma course. The service of the petitioner came to be terminated and aggrieved thereby the petitioner filed Appeal before the School Tribunal, as the service conditions of the employees working in diploma course are governed and regulated by the provisions

of MEPS Act and the rules made thereunder. The School Tribunal has dismissed the Appeal by applying the provisions of Maharashtra University Act, 1994. A categorical finding has been recorded by the School Tribunal that all the appointment orders issued to the petitioner are issued under the Maharashtra University Act and hence the Tribunal concluded that the provisions of the MEPS Act cannot be applied and petitioner cannot get the benefit of deemed confirmed employee as contemplated by section 5(2) of the Act. As directed by this court by order dated 28th August, 2006 the Respondent No. 3 has filed affidavit in reply and alongwith the reply the permission granted to the Respondent No. 1 to start a diploma course is also annexed. The permission granted by the State Government to start the diploma course is dated 10th August, 1983 and undisputedly the petitioner is teaching as lecturer in diploma course. If this be so, the petitioner's service conditions are governed and regulated by the MEPS Act and the rules made thereunder. The service conditions of the employees working in a diploma course are not governed by the University Act. The said position is clear from the judgment of this court reported in 2001 Maharashtra Law Journal 606. So also the judgement reported in 2003(2) Maharashtra Law Journal 316. In the Judgment

2003(2) Maharashtra Law Journal 316 this Court has categorically held that "All schools imparting education or training below degree level including institutions imparting technical or vocational education recognised by the Director of Education or Director of Technical Education falling within the category of private schools are governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1978 and Rules of 1981". Learned counsel for the petitioner thus contended that the Tribunal has committed a patent illegality while deciding the Appeal and thus the impugned order deserves to be quashed.

2. Per contra learned counsel for the Respondent No. 1 submits that besides holding that Maharashtra University Act would govern the service conditions of the petitioner the Tribunal has as well decided the matter on merit and hence the order ought not to be interfered with. I am of the clear view that the very basis of the order impugned is that the provisions of MEPS Act do not apply and hence the petitioner cannot claim benefit under section 5 of the Act, being erroneous, the impugned judgment stands vitiated. In the result the writ petition deserves to be allowed. The

impugned order passed by the School Tribunal is quashed and set aside.

The matter is remanded back to the Presiding Officer of the School Tribunal for de novo hearing and adjudication of Appeal on merit. I direct the School Tribunal to decide the matter as expeditiously as possible and at any rate within a period of 6 months from today. Rule is made absolute in above terms. No order as to costs.

(A.P. DESHPANDE)